

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ZDISLAW SZEWCZYK,

Plaintiff-Appellant,

v

NEXTLINK, INC., n/k/a XO MICHIGAN, INC.,

Defendant/Third-Party Plaintiff-  
Appellee,

and

CORBY ENERGY SERVICES,

Third-Party Defendant.

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UNPUBLISHED

October 12, 2004

No. 248189

Oakland Circuit Court

LC No. 02-041890-NI

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting the motion for summary disposition filed by defendant Nextlink, Inc., n/k/a XO Michigan, Inc., and we reverse and remand.<sup>1</sup>

Nextlink hired third-party defendant Corby Energy Services to install duct and fiber optic cables in plaintiff's front lawn. A large white covering, commonly referred to as a handhole, was placed over the cables. The next day, plaintiff was walking backwards while mowing his lawn when he tripped near the handhole and fell to the ground, sustaining injuries. Plaintiff filed suit alleging that Nextlink, via its agent Corby, negligently failed to exercise reasonable care to repair and maintain the area around the handhole, and that the improperly installed handhole constituted a nuisance. Nextlink moved for summary disposition pursuant to MCR 2.116(C)(10), and argued that the handhole was open and obvious, that no special aspects of the

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<sup>1</sup> This appeal is being decided without oral argument pursuant to MCR 7.214(E).

handhole made it unreasonably dangerous in spite of its open and obvious nature, and that it did not constitute a nuisance. The trial court agreed and granted Nextlink's motion.<sup>2</sup>

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

The trial court granted summary disposition in favor of Nextlink on the ground that the condition of which plaintiff complained was open and obvious. Nextlink did not own or possess the property on which plaintiff's injury occurred; therefore, application of the open and obvious danger doctrine, an aspect of premises liability, to this case was erroneous. See *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998). Accordingly, we hold that the trial court erred when it granted summary disposition on the basis of the open and obvious danger doctrine.

Because this case involves basic common law negligence principles, we reverse the trial court's order that granted summary disposition in favor of defendant, and remand for further proceedings not inconsistent with our opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin  
/s/ Henry William Saad  
/s/ Peter D. O'Connell

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<sup>2</sup> The trial court concluded that because no basis existed on which to hold Nextlink liable, Nextlink's third-party claim against Corby was moot.